

## **EXHIBIT 2.9: FINDINGS OF EFFECT (FOE) FORMAT AND CONTENT**

In accordance with [Stipulation XVI](#) of the Section 106 Programmatic Agreement (Section 106 PA), finding of effect reports must be consistent with the documentation standards set forth in 36 CFR 800.11.

### **NOTIFICATION - NO HISTORIC PROPERTIES AFFECTED**

#### **Notify SHPO and other consulting parties**

When Caltrans has consulted with SHPO or any other consulting parties on a determination of eligibility for properties in a project's Area of Potential Effect (APE) and finds that the project will result in

1. No Historic Properties Affected, either because all of the properties in the APE were determined by Caltrans to be not eligible for the National Register of Historic Places (National Register) or
2. There are historic properties in the APE but the project will not have an effect on them,

Caltrans must provide the SHPO and any other consulting parties with notification of that finding pursuant to [Section 106 PA Stipulation IX.A](#). Checking the appropriate box on the HPSR form or adding a statement to that effect in a narrative HPSR will accomplish the notification.

#### **Documentation to File – SHPO and consulting parties' notification not necessary**

If Caltrans has not consulted with SHPO or any other consulting parties on eligibility, either because

1. There were no properties requiring evaluation in the APE (i.e., no properties present or all properties qualified as exempt under [Section 106 PA Attachment 4](#)), or
2. All properties in the APE were previously determined not eligible for the National Register (e.g., Category 5 bridges),

Caltrans documents a No Historic Properties finding to file only.

### **NOTIFICATION OF NO ADVERSE EFFECT WITH STANDARD CONDITIONS**

When Caltrans finds that the Standard Conditions outlined in [Section 106 PA Stipulation X.B.2](#) are applicable, Caltrans provides documented

notification of a finding of No Adverse Effect with Standard Conditions to SHPO, FHWA, and any other consulting parties. This notification may be accomplished by checking the appropriate box on the HPSR form, or adding a statement to that effect in a narrative HPSR, and attaching, as appropriate:

- An Environmentally Sensitive Area (ESA) Action Plan in accordance with [Section 106 PA Attachment 5](#) (for archaeological properties). [Exhibit 2.7](#), [Chapter 5](#) and Chapter 2 [Section 2-4.3](#) contain guidance and information for ESA Action Plans.
- Plans for rehabilitation according to the [Secretary of the Interior's Standards for the Treatment of Historic Properties](#), with verification that they have been reviewed by or under the direct supervision of Caltrans PQS certified as a Principal Architectural Historian with the requisite experience. See the guidance in Chapter 1 [Section 1-3.3](#) – Architectural History and History. The Historical Architectural Specialty Branch at Headquarters is available for assistance and guidance when considering this approach. See also Chapter 2 [Section 2-4.3](#) and [Chapter 7](#) for additional information.

## FINDING OF NO ADVERSE EFFECT

When Caltrans proposes a finding of No Adverse Effect other than a finding of No Adverse Effect with Standard Conditions, Caltrans prepares a finding of effect document for FHWA review. A No Adverse Effect finding should be documented according to the following outline:

### 1. Introduction

Summarize the project Section 106 compliance activities to date. Include the date the HPSR was processed and briefly describe the historic properties and their National Register status. Specify the properties for which there will be No Adverse Effect as a result of the project, and any for which a No Historic Properties Affected finding is applicable.

For the undertaking as a whole, state that FHWA, in applying the Criteria of Adverse Effect, proposes that a finding of No Adverse Effect is appropriate and is seeking SHPO's concurrence in the finding, pursuant to 36 CFR 800.5(c) and [Section 106 PA Stipulation X.B\(1\)](#).

### 2. Description of the Undertaking

- Identify the project by district, county, route, and postmile limits, and indicate distance to the nearest town or other landmark.

Identify the APE, and refer to attached maps, photographs, and drawings, as necessary.

- Describe the project concisely but with sufficient detail to ensure that a reviewer unfamiliar with the project or project area has a clear understanding of the extent of potential effects.
- Discuss all pertinent project-related activities and alternatives.

### **3. Public Participation**

- Summarize efforts to involve the public in the Section 106 process as well as any comments received to date.
- Identify any additional consulting parties, such as other federal and state agencies, Native Americans, or local governments, and summarize consultation efforts and results to date.
- Describe the ongoing NEPA environmental process, including environmental compliance events such as public hearings.
- Emphasize cultural resources issues discussed at public meetings, and if concerns have been raised, discuss steps taken to ensure public concerns are incorporated into the Section 106 process.

### **4. Description of Historic Properties**

Provide a brief description of the steps taken to identify historic properties. Discuss any comments received from the public or consulting parties that aided in the identification process.

For each historic property, give the

- date the property was listed on the National Register;
- date the Keeper of the National Register determined the property eligible, if applicable, and state that it was a Keeper determination of eligibility;
- date that SHPO concurred with Caltrans' determination regarding National Register eligibility; or
- state that an eligibility consensus determination is pending, as applicable.

Describe each historic property concisely with emphasis on the characteristics that qualify it for the National Register. See [Exhibit 7.3](#) for more information on essential physical features. For each historic property, specify the

- criteria for which each property is eligible,

- level and period of significance,
- property boundaries, and
- contributing and non-contributing elements.

The summary statements of significance and property descriptions in the HPSR may be used (see [Exhibit 2.17](#) for textual information to include in the summary statements).

### **5. Application of the Criteria of Adverse Effect**

- Discuss the application of the Criteria of Adverse Effect for each historic property. State the specific criteria that apply and describe in detail why the effect is not adverse.
- Describe the physical effects of the project on each property, as well as any indirect effects, such as increased noise or introduction of visual elements out of character with the property.
- Provide sufficient detail to allow a reviewer not familiar with the project or the project area to understand the extent of any direct or indirect effects on each historic property (see [Exhibit 2.17](#) for additional guidance).

### **6. Conditions Proposed**

- Discuss in detail any conditions proposed to avoid adverse effect to each historic properties.
- Present separate sub-sections on engineering conditions (e.g., modifications to the undertaking) and conditions directly related to the property itself (e.g., establishing an ESA, replacement of historic materials in kind).
- If ESAs are proposed, an ESA Action Plan that discusses specific protection and enforcement measures for each property is included as an attachment.

### **7. Conclusions**

Briefly summarize the contents of the document that resulted in the Finding of No Adverse Effect. If warranted, include a table that summarizes effects and conditions proposed for each historic property and alternative (see Table 1 below).

### **8. Attachments**

Include the following attachments.

- Project Vicinity Map
- Project Location Map
- Project APE Map (detail location of the historic property, including the National Register boundaries, in relation to the project and depict project effects on the property)
- Correspondence with the SHPO, Native Americans, and any other consulting parties, or the public (e.g., local government agency)
- Exhibits pertaining to the historic properties discussed (e.g., photographs, construction drawings, photo simulations)
- ESA Action Plan (for archaeological properties)
- Restrictions or conditions to ensure preservation such as a local agency resolution or protective covenants (for buildings and structures)

## **FINDING OF ADVERSE EFFECT**

### **When Adverse Effects Cannot be Avoided**

When Caltrans proposes that adverse effects cannot be avoided, Caltrans prepares the finding of effect documentation and sends it to FHWA for review. FHWA will then consult with SHPO. Caltrans, on behalf of FHWA sends notification of the findings to the consulting parties and interested members of the public, as appropriate. Caltrans also assists FHWA in resolving the adverse effects. (See [Section 106 PA Stipulations X.C.1.](#) and [XI.](#))

### **Adverse Effects to Archaeological Properties Listed/Eligible under Criterion D *Only***

When Caltrans proposes that the adverse effects are to archaeological properties listed or determined eligible for inclusion in the National Register *exclusively* under Criterion D, Caltrans simultaneously notifies and sends the supporting documentation to FHWA, SHPO and other consulting parties. (See [Section 106 PA Stipulations X.C.1.](#) and [XI.](#))

### **Adverse Effect Documentation**

An Adverse Effect finding should be documented according to the following outline:

### **1. Introduction**

- Summarize the project Section 106 compliance activities to date. Include the date the HPSR was processed, and briefly describe the historic properties and their National Register status.
- Specify the properties for which there will be an Adverse Effect as a result of the project, and any for which a No Adverse Effect or No Historic Properties Affected finding is applicable.
- For the undertaking as a whole, state that FHWA has determined that the undertaking will have an Adverse Effect on historic properties pursuant to [Section 106 PA Stipulation X.C](#) and, with the cooperation and assistance of Caltrans, is consulting SHPO regarding the resolution of adverse effects, pursuant to [Section 106 PA Stipulation XI](#), 36 CFR 800.6(a), and 800.6(b)(1).

### **2. Description of the Undertaking**

- Identify the project by district, county, route, and postmile limits, and indicate distance to the nearest town or other landmark.
- Identify the APE, and refer to attached maps, photographs, and drawings, as necessary.
- Describe the project concisely but with sufficient detail to ensure that a reviewer unfamiliar with the project or project area has a clear understanding of the extent of potential effects.
- Discuss all pertinent project-related activities and alternatives.

### **3. Public Participation**

- Summarize efforts to involve the public in the Section 106 process as well as any comments received to date.
- Identify any additional consulting parties, such as other federal and state agencies, Native Americans, or local governments. Summarize consultation efforts and results to date.
- Describe the ongoing NEPA environmental process, including environmental compliance events such as public hearings.
- Emphasize cultural resources issues discussed at public meetings, and if concerns have been raised, discuss steps taken to ensure public concerns are incorporated into the Section 106 process.

#### **4. Description of Historic Properties**

Provide a very brief description of the steps taken to identify historic properties. Discuss any comments received from the public or consulting parties that aided in the identification process.

For each historic property, give the

- date the property was listed on the National Register;
- date the Keeper of the National Register determined the property eligible, if applicable, and state that it was a Keeper determination of eligibility;
- date that SHPO concurred with Caltrans' determination regarding National Register eligibility; or
- state that an eligibility consensus determination is pending, as applicable.

Describe each historic property concisely with emphasis on the characteristics that qualify it for the National Register. See [Exhibit 7.3](#) for more information on essential physical features. For each historic property, specify the

- criteria for which each property is eligible,
- level and period of significance,
- property boundaries, and
- contributing and non-contributing elements.

The summary statements of significance and property descriptions in the HPSR may be used (see [Exhibit 2.17](#) for textual information to include in the summary statements).

#### **5. Application of the Criteria of Adverse Effect**

- Discuss the applicable Criteria of Adverse Effect, and explain in detail why the effect is adverse.
- Describe the physical effects of the undertaking on each property, including any indirect effects such as increased noise or introduction of visual elements out of character with the property.
- For every alternative, describe the direct and/or indirect effect the alternative will have on each historic property. See [Exhibit 2.17](#) for additional guidance.

## **6. Alternatives Considered but Rejected**

This section is included in a finding of Adverse Effect document *only* when it is accompanied by a draft Memorandum of Agreement (MOA). If a draft MOA is not attached, this information is discussed in a consultation document that accompanies the MOA and is forwarded by FHWA to SHPO under a separate cover.

- Describe alternatives that were considered but rejected, and the rationale for the rejection, particularly any “avoidance” alternatives (i.e., an alternative that would not adversely affect historic properties).
- Description and graphics may be derived from the “Alternatives” discussion in the Environmental Document.
- Discussion in the finding of Adverse Effect document should focus on the effects of the various alternatives upon identified historic properties, however.

## **7. Mitigation Measures**

This section is included in a finding of Adverse Effect document *only* when it is accompanied by a draft Memorandum of Agreement (MOA). If a draft MOA is not attached, this information is discussed in a consultation document that accompanies the MOA and is forwarded by FHWA to SHPO under a separate cover.

Discuss any measures proposed to avoid, minimize, or mitigate the adverse effects to each historic property (e.g., implementation of a Data Recovery Plan or historic property marketing plan).

## **8. Conclusions**

- Briefly summarize the contents of the document that resulted in the finding of Adverse Effect.
- State that Caltrans finds that there are historic properties affected pursuant to [Section 106 PA Stipulation IX.B](#).
- State that FHWA proposes that the undertaking will have an Adverse Effect for the following properties...” (list properties), and with the cooperation and assistance of Caltrans, is consulting to resolve adverse effects pursuant to [Section 106 PA Stipulation XI](#), 36 CFR 800.6(a) and 800.6(b)(1).
- If applicable, refer to the attached draft MOA, which stipulates the terms under which the undertaking will be implemented in order to take into account its effects on historic properties.



- If the draft MOA does not accompany the finding of effect document, state that this document serves only to obtain SHPO concurrence that the undertaking will have an Adverse Effect on historic properties and that mitigation measures will be discussed in a separate consultation document along with a draft MOA.
- If warranted, include a table that summarizes effects and mitigation measures at each property for each alternative (see Table 1 below).

**Table 1. Example Tables for Finding of Adverse Effect Document**

<b>Property</b>	<b>Effect Finding (Alt. 1)</b>	<b>Mitigation</b>
CA-ABC-1234	Not Adverse - indirect potential for destruction	ESA – see ESA Action Plan
Jones House	None – avoidance	N/A
City Park	Not Adverse - ROW take of non-contributing element	N/A

  

<b>Property</b>	<b>Effect Finding (Alt. 2)</b>	<b>Mitigation</b>
CA-ABC-1234	Adverse – destruction	Data Recovery Plan
CA-ABC-1235	Not Adverse – indirect potential for destruction	ESA – see ESA Action Plan
Jones House	None – avoidance	N/A
Jones Creek Bridge	Adverse – destruction	HABS/HAER
City Park	Not Adverse - ROW take of non-contributing element	N/A

## **9. Attachments**

- Project Vicinity Map
- Project Location Map
- Project APE Map (detail location of the historic property, including the National Register boundaries, in relation to the project and depict project effects on the property)
- Correspondence with the SHPO, Native Americans, and any other consulting parties or the public (e.g., local governments).
- Exhibits pertaining to the historic properties discussed (e.g., photographs, construction drawings, photo simulations)
- ESA Action Plan, if applicable (for archaeological properties)
- Data Recovery Plan (for archaeological properties)
- Restrictions or conditions to ensure preservation, such as a local agency resolution or protective covenant (for buildings and structures)